

FILE

In re Marian Bonner

**ANDREWS, EWING & OAKMAN
1656 BARRINGTON BOULEVARD
CASCADE, FRANKLIN 33339**

MEMORANDUM

TO: Applicant
FROM: Denise Samuels
RE: Marian Bonner matter

July 27, 2004

Dr. Nicole Hall is the daughter of Dr. Marian Bonner, one of the most prominent educational reformers in this country. Dr. Hall wants to stop the Success for Every Child Association (SECA), a for-profit educational corporation, from the unauthorized use of her deceased mother's writings and name.

We do not yet know if SECA got physical possession of the writings lawfully. Nevertheless, we have enough information to proceed with an action based on Dr. Hall's copyright in the materials and her right to assert a violation of her mother's right of publicity. However, Dr. Hall would prefer to resolve this matter informally. I told her I would write a demand letter to SECA's attorney for her to review.

I need your help in drafting the demand letter to William Drake, the attorney for SECA. We want to convince him that if SECA uses Dr. Bonner's writings and her name, it will infringe on Dr. Hall's copyright and will violate the right of publicity. In fact, SECA might have already violated the right of publicity by announcing its intended plans.

Your letter should contain

- a description of the dispute;
- a brief statement of the salient facts; and
- arguments that support our position concerning copyright infringement and the right of publicity.

Your arguments should incorporate the facts and the authorities.

You should address only Dr. Hall's claims of copyright infringement and violation of the right of publicity. Do not concern yourself with Dr. Hall's potential claims for injunctive relief, damages, or return of the papers themselves. I will address these issues and later amend your letter to include them.

TRANSCRIPT OF INTERVIEW WITH NICOLE HALL

July 26, 2004

Attorney: Good to see you, Nicole. The Library Association letter you dropped off is astounding.

Client: So much to take in. But I need to make some decisions quickly to preserve my mother's legacy. You need to help me figure out how to stop this sleazy, so-called educational group from desecrating my mother's name and using it for purposes she would have abhorred. She remained deeply committed to public education, even with its shortcomings. Making a profit from public education was anathema to her. I also don't want them misusing her writings to promote their own agenda.

Attorney: Tell me more of the background. What do you know about your mother's writing?

Client: Not much. She talked about writing another book that would help people understand why she tried all her projects, including those that had gone wrong. But she was constantly on to the next project. I never saw any writing on her desk or in her study. She was very conflicted about her academic impulses to analyze the world and her activist impulses to change it. And, at the end of her life, she became depressed, as well as disheartened. Only the kids in her classes kept her going.

Attorney: Were you involved with your mother during her last years?

Client: Sure. I visited her about twice a month in Stone Park. We got along fine.

Attorney: Tell me why you didn't end up with her papers.

Client: I didn't clean out her house. My niece, Celina Miller, lived close to my mother, and they saw each other often. Celina called me when my mother had her stroke. My mother was able to communicate only a little so there was no chance to discuss anything. In her will, she had given me everything, so I didn't think there was much about property or arrangements to talk about anyway.

Attorney: What happened after she died?

Client: After the small, private memorial service in Stone Park—my mother was very clear that this sort of event was all she wanted—Celina wanted to go through my mother's house and pack things up. I offered to be there, but she wanted to be alone. I thought she sent everything to me. There were no papers. There were photographs and other personal stuff, but no writings.

Attorney: Have you discovered anything since you got the Library Association letter?

Client: I called Celina. She remembered two packing boxes labeled "papers" in a closet with numerous projects done by my mother's students—pottery, mobiles, posters, dioramas. Celina thought the boxes contained student papers. Celina put the boxes in her van, covered them with bags filled with the student projects, and took them to Husein Aboud—a neighbor who had been very kind to my mother—for storage in his garage. Celina meant to return them to the students, but forgot.

Attorney: Do you know how the papers got from the garage to SECA?

Client: Some people Celina thought were from the school contacted her about six months after my mother's death about papers my mother had. Celina thought they meant the student papers so she told them where they were. I called Husein, and he remembered checking with Celina and letting the people take everything. He, too, thought they were from Stone Park schools, but he doesn't know if they actually said that.

Attorney: Anything else?

Client: Nothing now. What do we do?

Attorney: A few preliminaries. Your mother did bequeath everything to you. When we probated your mother's will, all her personal property went to you, including all her personal papers and her copyright in those papers. There is an oddity of copyright law that makes ownership complex. Ownership of the physical papers and ownership of the copyright are independent of each other. When your mother died, both the physical papers and her copyright became yours. Because of this distinction, we have two routes to pursue. We need to get back the physical papers as fast as possible. I will immediately dispatch our best investigator to find out more about how SECA acquired the papers, so we can

figure out if SECA obtained them lawfully. We can then decide what to do to get the papers back.

Client: I'm not sure I understand the distinction between ownership of the copyright and the papers themselves.

Attorney: Yes, it is sort of counterintuitive. Let me give you an example. Suppose you write a personal letter and send it to someone. You own the copyright in the letter and you also own the right of publication and distribution, even though the recipient owns the letter.

Client: Okay, now I think I understand. I'd like to move as fast as possible. Who knows what they're doing with my mother's papers.

Attorney: Second, we can move quickly to stop SECA from taking any actions involving the copyrighted material in the papers. We can send a letter demanding that they take no action regarding the papers. We can also include a demand in the letter that SECA stop violating what is called your mother's right of publicity. They may have already misused her name and renown for their own purposes. We may need to get SECA to reverse action they've already taken. If this doesn't work, we can file a lawsuit seeking an injunction and damages. Once we learn whether SECA has done anything unlawful in obtaining the papers, we may add a claim for return of the papers themselves.

Client: I'm relieved that there are actions that we can take—quickly.

Attorney: I know and respect SECA's lawyer, Bill Drake, and I believe a letter fully stating our position might resolve everything. SECA could avoid a lot of bad publicity and maybe damages for wrongful actions if they agree not to go ahead with any of their plans or take any other actions involving use of your mother's name or private writings without your permission. If this letter works, it would be the quickest and cleanest way to resolve the problem. If it doesn't work, we can go ahead with the other plan. We might lose a few days, but this will give SECA's lawyer time to do the right thing.

Client: My mother would have liked this all resolved quietly.

Attorney: I'll prepare a draft of a letter to the lawyer and call you by noon tomorrow.

The Franklin Library Association
452 Ocean Boulevard
Franklin City, Franklin 33100

Elizabeth Philips, *Associate Director for Acquisitions*

July 23, 2004

Dr. Nicole Hall
491 Fayette Street
Cascade, Franklin 33337

Dear Dr. Hall:

I write concerning developments of great urgency and significance to the preservation and dissemination of the work of your distinguished mother, Dr. Marian Bonner. The Franklin Library Association just learned that the Success for Every Child Association (SECA) has recently obtained a cache of your mother's personal materials, including letters and journals covering the period from 1952 to 2003, and handwritten drafts of speeches.

Yesterday, SECA, a for-profit educational corporation, announced in a press release and news conference that it had acquired previously unknown materials of great historical and social value written by your mother and is planning to change its name to the Marian Bonner Educational Group. I immediately contacted Louise Boyle, the CEO of SECA, to inquire about the material and SECA's plans for its use. Ms. Boyle referred me to William Drake, counsel for SECA. Mr. Drake said that he could not disclose how SECA had acquired the materials, but he did say that there were more than 300 letters, 50 handwritten speeches, and 10 volumes of journals, spanning the entire length of Dr. Bonner's career and all apparently written in her handwriting. Mr. Drake indicated that, in conjunction with a celebration marking its name change, SECA plans to publish and distribute to all state legislators REDISCOVERING MARIAN BONNER'S LEGACY, a small volume of excerpts from your mother's newly discovered writings that stress the need for attention to the individual needs of each child, the signature focus of SECA. Following the publication, SECA intends to sell your mother's materials to collectors. Furthermore, SECA has already been awarded contracts by state legislators to run pilot programs in

three Franklin cities to take over "under-performing" schools. SECA is positioning itself to be the major for-profit educational provider in Franklin and beyond. Identification with your mother's work will advance SECA's commercial goals.

I am sure that you understand the enormous historical significance of your mother's work. There are large gaps in our understanding of her. Scholars have her groundbreaking book, *DISCRIMINATION, PUBLIC EDUCATION, AND DEMOCRACY*, and the records from her work as a citizen member on the Franklin Education Commission are in our archives, but there is little personal material that provides insight into developments in her thought and in her evaluation of her own efforts. These materials are of utmost importance to scholars, however. They are a legacy for the public, especially for all who care about education, racial equality, and the creation of a better world. It is highly unlikely that research libraries can afford to go head-to-head with wealthy bidders when these materials are sold. In addition, Mr. Drake indicated that SECA intends to sell the materials in separate units, which will mean that they will be dispersed in various sites around the country and may be totally inaccessible or accessible only on a restricted basis.

I write because I fear that you may not be aware of these developments. I have also rather presumptuously assumed that you are concerned about academic and public access to your mother's work. From your own work as a physician in the leadership of public health efforts in Franklin, I know that you have worked tirelessly on behalf of expanding both public understanding and academic research. I am also aware from accounts of the latter years of your mother's life that she was reclusive. Therefore, I have made inferences that may not be correct. I am hopeful that you may wish to initiate action to forestall or halt these developments. The Library Association can do little directly. We are available, however, to assist you. The Library Association may also be able to help if you are interested in pursuing publication of an annotated edition of your mother's papers.

A handwritten signature in black ink that reads "Elizabeth Philips". The signature is fluid and cursive, with "Elizabeth" on the top line and "Philips" on the bottom line, slightly overlapping.

Elizabeth Philips, Ph.D.
Associate Director for Acquisitions

Dictionary of Historical Biography for the State of Franklin

Marian Bonner (1922-2003)—A noted scholar, dynamic social reformer, and tireless citizen advocate, Marian Bonner played a major role in designing and implementing an innovative strategy for dismantling the system of *de facto* racial segregation in the public school system in Franklin. In 1952, Bonner received a dual Ph.D. from the University of Franklin in American History and Sociology. Her dissertation analyzing the interaction of the complex historical and sociological factors that contributed to actual, although not legally mandated, racial segregation in public schooling in Franklin was published by Franklin University Press in 1954, the year of the United States Supreme Court's decision in *Brown v. Topeka Board of Education* that outlawed *de jure* segregation in public education. Bonner's work provided the first major academic analysis of how eradicating legally imposed segregation of public schools would not by itself produce racially integrated schools. *DISCRIMINATION, PUBLIC EDUCATION, AND DEMOCRACY* was awarded the prestigious *Hanson Prize in History* in 1955.

While a faculty member in the Sociology Department at the University of Franklin for twelve years, Bonner developed her ideas about how to achieve racially integrated schools. She worked on proposals in the areas of housing and employment. Believing that changes in residential segregation would come slowly, she developed prototypes of public educational systems with flexibly drawn school boundaries based on factors other than geographical location. Throughout her career, Bonner argued that a publicly funded, operated, and controlled school system was essential to racial justice and democratic participation.

Known as "The Great Educator," with a national reputation as a pre-eminent educational reformer, Bonner was chosen in a yearly poll conducted by the *Franklin Daily Times* as Educator of the Year fifteen times. More public schools in Franklin are named after her than any other individual. The Franklin Education Association awarded her its prestigious *Champion of Education Award*, which it has presented only four times in its fifty-year history. In 1986, the Douglas Foundation recognized Bonner with its yearly lifetime achievement award to the citizen of Franklin who most powerfully shaped national policy debate. From 1976 to 1988, Bonner served on the Committee of Trustees for the University of Franklin.

In 1988, despite her considerable power, prestige, and influence, Bonner announced publicly that she was discouraged by the continuing barriers to educational equity, even in Franklin, where many had made sustained efforts to accomplish change. Little is known about the professional and personal sources of Bonner's discontent. Bonner moved to Stone Park, a small town in northern Franklin with a high percentage of African-American residents, where she had grown up and attended public school. She taught first grade at Stone Park Elementary School, where she worked until she died of a stroke in 2003.

See also NOTABLE AMERICAN WOMEN, PROMINENT AMERICAN EDUCATORS, AFRICAN-AMERICANS IN PUBLIC LIFE.

